

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ABE PARKER, III,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

Case No. 1:22-cv-00158-CDB (SS)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

(Doc. 15)

Plaintiff Abe Parker, III ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying his application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the Administrative Record ("AR") and the parties' briefs, which were submitted without oral argument. (Docs. 14, 15, 21).² The Court finds and rules as follows.

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¹ On January 21, 2025, Michelle King was named Acting Commissioner of the Social Security Administration. *See* <https://www.ssa.gov/agency.commissioner/> (last visited January 23, 2025). She therefore is substituted as the Defendant in this action. *See* 42 U.S.C. § 405(g) (referring to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the Commissioner shall, in [their] official capacity, be the proper defendant.").

² Both parties have consented to the jurisdiction of a magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 13).

I. BACKGROUND

A. Administrative Proceedings and ALJ's Decision

On June 26, 2020, Plaintiff filed an application for a period of disability and disability insurance benefits under Title II of the Social Security Act, alleging disability commencing on June 15, 2024. (Doc. 15 at 3); (AR 232-235). Plaintiff's claim was initially denied on September 30, 2020, and again upon reconsideration on May 4, 2021. (AR 138-142; 143-149). Plaintiff requested a hearing before an Administrative Law Judge ("ALJ") on May 12, 2021. (AR 150). The ALJ, Robert Milton Erickson, held a hearing on August 26, 2021. (AR 42-85). ALJ Erickson issued an unfavorable decision on October 7, 2021. (AR 21-41). The Appeals Council denied Plaintiff's request for review on December 20, 2021, thereby effectuating the ALJ's decision as the final decision of the Commissioner. (AR 1-6); 42 U.S.C. § 405(h). Plaintiff subsequently filed this action seeking judicial review of the ALJ's decision. (Doc. 1).

After reviewing the evidence, the ALJ determined that Plaintiff met the insured status requirements of sections 216(i) and 223 of the Social Security Act through September 30, 2024. (AR 26 ¶ 1). The ALJ thereafter considered Plaintiff's claims using the five-step sequential evaluation required by C.F.R. § 404.1520(a). (AR 26). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since February 1, 2020, the alleged onset date. (*Id.* ¶ 2). The ALJ further found that Plaintiff worked after the alleged disability onset date, but this work activity did not rise to the level of substantial gainful activity. (*Id.*).

At step two, the ALJ found that Plaintiff has the following severe impairments: obesity, depressive disorder, and PTSD. (*Id.* ¶ 3). The ALJ determined that Plaintiff's diagnosis of presbyopia is non-severe because it does not significantly limit Plaintiff's ability to do basic work activities. The ALJ also determined that Plaintiff's alleged low back and knee pain and glaucoma are not medically determinable impairments ("MDI"), as the allegations do not meet the durational requirement and lack the requisite objective medical testing to establish a MDI. (AR 27). As to back and knee pain, though the consultative orthopedic evaluation described Plaintiff as having chronic lumbosacral musculoligamentous sprain/strain likely associated with degenerative disc disease and chronic pain in the knees bilaterally with infrapatellar tenonitis and probable early

1 patellofemoral chondromalacia (citing Ex. 6F), the ALJ determined that these records lack the
 2 requisite objective medical testing necessary to establish a MDI. (*Id.*). Though the records revealed
 3 glaucoma was suspected in 2021, the ALJ determined the records lack evidence of definitive testing
 4 or diagnosis (citing to Exhs. 5F/33 and 10F/17). (*Id.*).

5 At step three, the ALJ found that Plaintiff does not have an impairment or combination of
 6 impairments that meets or medically equals the severity of one of the listed impairments in 20
 7 C.F.R. Part 404, Subpart P, Appendix 1. (AR 27-28). The ALJ discussed the reasoning as to why
 8 each impairment failed to meet the requirements of the listings. The ALJ found no evidence that
 9 Plaintiff's obesity affects any body system or mental functioning such that it would medically equal
 10 listing severity. In evaluating the severity of Plaintiff's mental impairments, the ALJ considered
 11 the four broad functional areas of mental functioning listed in the "paragraph B" criteria.³ The
 12 ALJ found that Plaintiff has a moderate limitation as to all four functional areas, and because these
 13 mental impairments do not cause at least two "marked" limitations or one "extreme" limitation, the
 14 ALJ determined that the "paragraph B" criteria are not satisfied. (AR 28).

15 The ALJ further considered the "paragraph C" criteria⁴ and found that the evidence fails to
 16

17 ³ The "paragraph B" criteria evaluate mental impairments in the context of four broad areas
 18 of functioning: (1) understanding, remembering, or applying information; (2) interacting with
 19 others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself.
 20 20 C.F.R. § Pt. 404, Subpt. P, App. 1. The severity of the limitation a claimant has in each of the
 21 four areas of functioning is identified as either "no limitation," "mild," "moderate," "marked," or
 22 "extreme." (*Id.*). To satisfy the paragraph B criteria, a claimant must have an "extreme" limitation
 23 in at least one of the areas of mental functioning, or a "marked" limitation in at least two of the
 24 areas of mental functioning. (*Id.*). An "extreme" limitation is the inability to function
 25 independently, appropriately, or effectively, and on a sustained basis. (*Id.*). A "marked" limitation
 is a seriously limited ability to function independently, appropriately, or effectively, and on a
 sustained basis. (*Id.*). A "moderate" degree of mental limitation means that functioning in this area
 independently, appropriately, effectively, and on a sustained basis is "fair." (*Id.*) And a "mild"
 degree of mental limitation means that functioning in this area independently, appropriately,
 effectively, and on a sustained basis is "slightly limited." (*Id.*); see *Carlos v. Comm'r of Soc. Sec.*,
 1:21-cv-00517-SAB, 2023 WL 1868870, at *4 n.7 (E.D. Cal. Feb. 9, 2023).

26 ⁴ "Paragraph C," subsection (1) requires a "highly structured setting that is ongoing that
 27 diminishes the signs and symptoms of [Plaintiff's] mental disorder." 20 C.F.R. § Pt. 404, Subpt.
 28 P, App. 1 § 12.04(C)(1). "Paragraph C," subsection (2) requires that Plaintiff "have minimal
 capacity to adapt to changes in [Plaintiff's] environment or to demands that are not already part of
 [Plaintiff's] daily life." (*Id.* at subsection (C)(2)).

1 establish the presence of the “paragraph C” criteria because Plaintiff had more than minimal
2 capacity to adapt to changes in his environment or to demands that are not already part of his daily
3 life. (AR 28). The ALJ found that there is insufficient evidence to establish that Plaintiff’s mental
4 disorder(s) were “serious and persistent.” The ALJ found no evidence in the record establishing
5 that despite Plaintiff’s diminished symptoms and signs, he achieved only marginal adjustment, nor
6 did it show that changes or increased demands have led to exacerbation of such symptoms or signs
7 and to deterioration in Plaintiff’s functioning. (AR 28).

8 Prior to step four, the ALJ found that Plaintiff has the residual functioning capacity (“RFC”) to
9 perform medium work as defined in 20 C.F.R. 404.156(c) except lift or carry occasionally 50
10 pounds, frequently 25, stand or walk 6 hours of an 8-hour workday, with no limitations in sitting.
11 (AR 28). The ALJ found that Plaintiff: can occasionally stoop, crouch, crawl, or kneel with no
12 exposure to extremes of cold or dampness; is capable of carrying out short and simple instructions
13 and maintaining concentration, persistence, and pace for the performance of those instructions; is
14 capable of superficial interaction with supervisors and coworkers within an environment that does
15 not involve interaction with the public; and can respond appropriately to changes in the work
16 setting. (AR 28).

17 In considering Plaintiff’s symptoms and the extent to which these symptoms can reasonably
18 be accepted as consistent with objective medical evidence and other evidence, the ALJ noted he
19 followed the two-step process as set forth in the 20 C.F.R. 404.1529 and Social Security Ruling
20 (“SSR”) 16-3p and considered the medical opinion(s) and prior administrative medical finding(s)
21 in accordance with 20 C.F.R. 404-1520c. First, the ALJ determined whether there is an underlying
22 medically determinable physical or mental impairment, *i.e.*, an impairment or impairments that can
23 be shown by medically acceptable clinical or laboratory diagnostic techniques that could reasonably
24 be expected to produce Plaintiff’s symptoms. Second, the ALJ evaluated the intensity, persistence,
25 and limiting effects of Plaintiff’s symptoms to determine the extent to which they limit Plaintiff’s
26 work-related activities. For this purpose, whenever statements about the intensity, persistence, or
27 functionally limiting effects of symptoms are not substantiated by objective medical evidence, the
28 ALJ considered other evidence in the record to determine if Plaintiff’s symptoms limit the ability

1 to do work-related activities. (AR 29).

2 The ALJ summarized Plaintiff's allegations from the time he stopped working on February
3 1, 2020, due to his mental and physical limitations. Upon consideration of the evidence, The ALJ
4 found that Plaintiff's medically determinable impairments could reasonably be expected to cause
5 the alleged symptoms, but that his statements concerning the intensity, persistence, and limiting
6 effects of symptoms are not entirely consistent with the medical evidence and other record
7 evidence. (AR 29).

8 The ALJ noted that since February 1, 2020, Plaintiff's records reveal treatment for obesity,
9 depressive disorder, and PTSD (citing to Exhs. 1F, 2F, 5F, and 7F-10F). The ALJ noted that
10 Plaintiff is obese as his body mass index has been calculated between 32 and 36.1 (citing to Exhs.
11 1F, 2F, and 5F). (AR 29).

12 The ALJ detailed Plaintiff's treatment records. The ALJ found that the treatment records
13 reveal that Plaintiff established care in April 2020 after he moved to Bakersfield from San Diego.
14 The ALJ further detailed the record's findings, including: Plaintiff maintained his wife perpetrated
15 domestic violence against him; Plaintiff reported no close relationships because "every relationship
16 has been destroyed"; he endorsed anxious and very low mood with associated symptoms of
17 anhedonia, low energy/motivation, anger, irritability, disturbed sleep, and dissociation; a reported
18 history of trauma with associated symptoms of hypervigilance, crowd avoidance, increased startle
19 response, flashbacks, and occasional nightmares; he failed to remember anger episodes, including
20 times when he harmed someone; the symptoms were moderate, constant, and impaired ability to
21 get things done; with increased depressive symptoms, he had low energy/motivation, often felt
22 tired, anhedonia, difficulty getting out of bed, and concentration issues; reported episodes during
23 which he slept four hours or less, high energy that can last for weeks, rapid speech, thinking faster
24 than normal, euphoria, increased sex drive, increase in usual spending, and being more gregarious.
25 The ALJ noted the records further revealed that in October 2020, Plaintiff was not socializing as
26 much, had trouble remembering appointments, and not always doing laundry, changing clothing,
27 showering, or taking care of his cat. The ALJ noted the records revealed that Plaintiff often forgot
28 to take medications for a day or two and needed help from his girlfriend, and when he did not take

1 medication, he noticed he got more angry or sad. The ALJ noted the records showed that after
2 Plaintiff submitted an Aid and Attendance application, he asserted during the assessment that he
3 needed reminders to take medication, bathe, and eat. The ALJ noted the records revealed that
4 Plaintiff maintained he had daily suicidal ideation and was not allowed to cook because holding a
5 knife triggered suicidal thoughts, and that Plaintiff was easily angered and frustrated, had issues
6 with financial impulsivity, and needed interventions during the week. (AR 30).

7 The ALJ detailed the Provider's findings. (AR 30). The providers noted that Plaintiff's
8 mood was depressed, irritable, anxious, "feeling overwhelmed,[] fatigued, [] stressed" with mood
9 congruent and labile affect and rapid speech. Treatment included medication management and
10 individual psychotherapy. The providers further noted that Plaintiff generally reported no side
11 effects to medications except some grogginess with hydroxyzine. (AR. 30).

12 The ALJ found that Plaintiff's statements concerning the intensity, persistence, and limiting
13 effects of his symptoms were inconsistent with the overall record. As to Plaintiff's alleged
14 significant mental health symptoms, the ALJ found that the record reveals Plaintiff's condition is
15 not as debilitating as alleged and improved with treatment. In support, the ALJ cites generally and
16 to specific pages in Exhs. 2F, 5F, and 10F. The ALJ found the records show that in addition to
17 treatment providers noting that Plaintiff was responding well to medication (Ex. 2F/36), Plaintiff
18 recognized that medication was helping him as indicated from Plaintiff's reporting that he
19 experienced a significant difference when he forgot to take medicine for a day or two (Ex. 2F/34),
20 that medication management helped "make him calm," Lamictal helped with symptoms, and
21 medications were working well overall (Ex. 2F/80; 5F/36, 47; 10F/107, 221), and that he felt "kind
22 of normal" and that everything seemed to be okay (Ex. 2F/39, 40). The ALJ noted that Plaintiff
23 reported in January 2021 that he had improved concentration and was taking care of himself (Ex.
24 10F/113), and in February 2021 he reported a "pretty good" mood and was able to handle his
25 "normal amount" of anxiety (Ex. 5F/36). The ALJ noted the records show that in addition to
26 medication, Plaintiff acknowledged that regular exercise was a positive modifying factor for his
27 mood and he had better mood quality with increased activity (Ex. 5F/73; 10F/133). The ALJ noted
28 records show Plaintiff reported "good sleep" with hydroxyzine and gabapentin (Ex.5F/36, 37), that

1 Plaintiff denied insomnia, and Plaintiff reported sleeping 7 to 8 hours per night (Ex. 2F/30; 5F/111).
2 (AR 30). The ALJ found no evidence of recent or a history of psychiatric hospitalizations,
3 emergency room visits, or need or emergency psychiatric care. (AR 31).

4 Further, the ALJ found that the treating providers noted mental health status examinations
5 of Plaintiff showed generally unremarkable findings. (AR 31-32). The ALJ found that Plaintiff's
6 mental status/cognitive functioning did not appear impaired, and Plaintiff was alert and oriented.
7 The ALJ detailed the findings which showed Plaintiff was optimistic/calm and in no apparent
8 distress, was responsive with good eye contact, appeared well-groomed and well-nourished, had
9 normal speech and mood, and had a normal thought process. The findings revealed Plaintiff had
10 no noted suicidal or homicidal ideation, auditory or visual hallucinations, psychosis, or delusions.
11 The findings further revealed that Plaintiff's memory was grossly intact, and his insight and
12 judgment were fair and good. (AR 31-32).

13 As to Plaintiff's alleged issues with social functioning and activities of daily living, the ALJ
14 found that Plaintiff reported having a new girlfriend in September 2020, he spent time with others
15 in person, and regularly attended church (Ex. 4E/6; 2F/30). (AR 31). The ALJ found that Plaintiff
16 reported that he was not violent nor that his anger result in aggression or violence toward others
17 (Ex. 2F/33; 5F/26; 10F/49). The ALJ found that the records reveal Plaintiff denied any
18 hallucination, delusion, nightmares, suicidal ideation, or homicidal ideation (Ex. 2F; 5F; 10F). The
19 ALJ found that Plaintiff's October 2020 submission for a Physician's Certificate for Aid and
20 Attendance application—which alleged issues with hygiene, medication management, punctuality,
21 and organization—was denied (Ex. 2F/22; 5F/18, 44; 10F/41). The ALJ found the evaluating
22 physician noted Plaintiff's records did not corroborate the need for in-person assistance and
23 indicated that Plaintiff was independent with activities of daily living, remained active with house
24 chores, and might only require intermittent low-level assistance secondary to musculoskeletal pain
25 flares. The physician noted that Plaintiff did not require medical care from physical therapy or
26 physiatry. The physician further noted that Plaintiff's mental health status was assessed as stable
27 overall and that his psychiatric symptoms did not impact his ability to manage his self-preservation
28 and safety (Ex. 5F/18, 19, 44; 10F/42). (AR 31).

1 Further, the ALJ found that in spite of Plaintiff's alleged symptoms, Plaintiff reported
2 normal appetite, good concentration, rare panic symptoms, and that his energy level was fine (Ex.
3 2F/12). (AR. 30-31). The ALJ found that Plaintiff reported walking over two miles to pick up
4 prescriptions and that he was walking everywhere because he did not have a car (Ex. 2F/37, 50).
5 The ALJ found that Plaintiff's activities of daily living were reportedly done independently (Ex.
6 5F/22-24; 10F/44-47) including that: Plaintiff reported living alone in April 2021; he was able to
7 vacuum, mop, take out the trash, do laundry and the dishes; throughout the day, Plaintiff took a
8 shower and had breakfast; Plaintiff had a driver's license and was able to drive himself to the clinic
9 one day; he went out and took a walk about twice a week; watched television about three hours
10 daily; did computer and telephone work; texted about eight hours daily; and read about two hours
11 daily (Ex. 6F/3-4). The ALJ found that Plaintiff reported being a minister to treatment providers,
12 but he minimized his experience as a pastoral assistant during a hearing (Ex. 2F/13, 65, 73; 10F/59,
13 206, 213, 214). (AR 31).

14 As to Plaintiff's alleged physician symptoms, the ALJ considered the April 20, 2021,
15 opinion of consultative physician Dale Van Kirk. (AR 32). Dr. Van Kirk diagnosed Plaintiff with
16 lumbosacral musculoligamentous sprain/strain likely associated with degenerative disc disease and
17 chronic pain in the knees bilaterally with infrapatellar tenonitis and probably early patellofemoral
18 chondromalacia. Dr. Van Kirk opined that Plaintiff could perform a range of medium exertional
19 work with postural and workplace environmental limitations. He further opined that Plaintiff could
20 frequently perform postural activities and should not be required to work in extremely cold and/or
21 damp environments. The ALJ found Dr. Van Kirk's opinion persuasive as it was based on an in-
22 person examination, is supported by the clinical findings noted during the examination and the
23 objective x-ray results, which revealed no significant findings, and the opinion is consistent with
24 the overall record, which reveals a lack of significant complaints and/or treatment for back or knee
25 pain.

26 The ALJ also considered the opinions of the state agency medical consultants. The ALJ
27 found unpersuasive the September 28, 2020, opinion of state agency medical consultant Dr. A.
28 Cepeda—which concluded there was insufficient evidence due to limited medical evidence and the

1 lack of response to attempts to obtain information for treating sources outside of Veteran's Affairs
2 (Ex. 1A)—because it was based on an incomplete record and is therefore inconsistent with the
3 overall record, which contains subsequent medical evidence that is sufficient to provide an
4 assessment of Plaintiff's physical condition. The ALJ found persuasive the May 4, 2021, opinion
5 of Dr. Manimtim which was rendered on reconsideration—that Plaintiff could perform a range of
6 medium exertional work with postural and environmental limitations, could frequently climb,
7 balance, stoop, kneel, crouch, and crawl, and should avoid concentrated exposure to cold/damp
8 environments—because it is consistent with the Dr. Van Kirk's opinion and the overall record,
9 which revealed generally unremarkable findings noted during physical examination as well as a
10 lack of significant complaints and/or treatment for back or knee pain. (AR 32).

11 The ALJ found unpersuasive the September 29, 2020, opinion of state agency medical
12 consultant Dr. H. Amado, which was identical to the opinion of Dr. Cepeda (Ex. 1A), for the same
13 reasons he found that opinion unpersuasive. The ALJ found somewhat persuasive the February 9,
14 2021, opinion of Dr. E. Covey, Psy. D., which was rendered on consideration. Dr. Covey noted
15 the updated medical evidence included the Adult Function Report and treatment records though
16 October 2020, which indicated severe mental medically determinable impairments but did not
17 document ongoing marked limitations. Dr. Covey opined that Plaintiff had mild limitation in
18 understanding, remembering, or applying information and moderate limitations in interacting with
19 others; concentrating, persisting, or maintaining pace; and adapting or managing himself. Dr.
20 Covey further opined that Plaintiff could carry out short and simple instructions, maintain
21 concentration, persistence, and pace for such, was capable of superficial interaction with
22 supervisors and coworkers within an environment that does not involve interaction with the public,
23 and was capable of responding appropriately to changes in the work setting (Ex. 3A). The ALJ
24 noted Dr. Covey's opinion is more consistent with the overall record, but the assessed "paragraph
25 B" limitations are not entirely consistent with his assessment. The ALJ highlights as inconsistent
26 that though Dr. Covey opined that Plaintiff had "mild" limitations in understanding, remembering,
27 and applying information, he also opined that Plaintiff was limited to short and simple instructions.
28 Thus, the ALJ found the assessed "paragraph B" limitation here is not persuasive and found

1 persuasive the remaining of Dr. Covey's assessments because they are consistent with the overall
2 record, appear to consider Plaintiff's subjective allegations, and are supported by the clinical
3 findings noted during the mental status examinations. (AR 33).

4 Lastly, the ALJ detailed and considered the August 28, 2020, Third Party Function Report
5 of Plaintiff's friend, Paul Micks, citing generally to Ex. 5E. The ALJ detailed that in the report,
6 Micks acknowledged knowing Plaintiff for only two months, but reported spending time with him
7 every day playing video games. She reported Plaintiff spent the day playing video games and
8 watching TV and was able to take care of his pet. Plaintiff needed reminders to shower, brush/floss
9 his teeth, eat, and clean. Plaintiff's sleep was disturbed by restlessness and because he was
10 "fidgety." Plaintiff prepares simple meals like sandwiches and frozen dinners a few times a week.
11 Plaintiff cleans, drives a car, and goes out alone. He shops for groceries in stores and by computer.
12 He was able to pay bills, manage his finances, and his ability to handle money had not changed.
13 Plaintiff spent time with others in person, on the phone, and via text several times a week. He went
14 to Walmart and church on a regular basis. Plaintiff had problems getting along with others due to
15 being overly sensitive, was easily irritated, and hard of communicating. Plaintiff, however, got
16 along with authority figures "just alright." He could pay attention "a long time," finished what he
17 started, and could follow written and spoken instructions well. His ability to handle stress was "just
18 alright" and he handled changes in routine "just okay." The ALJ found the opinion of Micks
19 somewhat consistent with the overall record, noting it as inconsistent with Plaintiff's subjective
20 allegations and demonstrates higher functioning than Plaintiff alleged. The ALJ noted, however,
21 the report was completed after Micks had only known Plaintiff for two months. (AR 33).

22 The ALJ assessed Plaintiff's residual functional capacity assessment, which is supported by
23 the overall record, which reveals Plaintiff's condition is not as debilitating as alleged and managed
24 with treatment. The ALJ further determined that the residual functional capacity is supported by
25 Plaintiff's reports of improvement to treatment providers, the generally unremarkable clinical
26 findings, and the various medical opinions. The ALJ determined the record lacks any medical
27 statements provided by any treatment providers that would support finding Plaintiff more limited
28 than what is established by the residual functional capacity. (AR 33-34).

1 At step four, the ALJ found that Plaintiff was unable to perform any past relevant work.
2 The ALJ noted that Plaintiff has past relevant work as a pastoral assistant, a telephone sales
3 representative, and a security guard. The ALJ found as required by SSR 82-62 that this work was
4 substantial gainful activity, was performed long enough for Plaintiff to achieve average
5 performance and was performed within the relevant period. However, the ALJ concluded that the
6 demands of Plaintiff's past relevant work exceed his RFC and thus, Plaintiff is unable to perform
7 past relevant work as actually or generally performed. (AR 34).

8 At step five, based on the testimony of the vocational expert, and considering Plaintiff's
9 age, education, work experience, and RFC, the ALJ concluded that Plaintiff could perform jobs
10 that exist in the national economy such as furniture cleaner, machine feeder, and scrap sorter.
11 Accordingly, the ALJ concluded that a finding of "not disabled" is therefore appropriate under the
12 five-step sequential evaluation required by C.F.R. § 404.1520(a). (AR 35).

13 After the Appeals Council denied review, Plaintiff initiated this action, filing the instant
14 motion for summary judgment on August 1, 2022. (Doc. 15). Defendant filed an opposition on
15 November 10, 2022. (Doc. 21).

16 **B. Medical Record and Hearing Testimony**

17 The relevant hearing testimony and medical record were reviewed by the Court and will be
18 referenced below as necessary to this Court's decision.

19 **II. LEGAL STANDARD**

20 A district court's review of a final decision of the Commissioner of Social Security is
21 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the
22 Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is
23 based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence"
24 means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion."
25 (*Id.* at 1159) (quotation and citation omitted). Stated differently, substantial evidence equates to
26 "more than a mere scintilla[,] but less than a preponderance." (*Id.*) (quotation and citation omitted).
27 "It is such relevant evidence as a reasonable mind might accept as adequate to support a
28 conclusion." *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In determining whether

1 the standard has been satisfied, a reviewing court must consider the entire record as a whole rather
2 than searching for supporting evidence in isolation. (*Id.*).

3 The court will review only the reasons provided by the ALJ in the disability determination
4 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,
5 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its judgment
6 for that of the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is
7 susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038
8 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s decision on account of an error
9 that is harmless. (*Id.*). An error is harmless where it is “inconsequential to the [ALJ’s] ultimate
10 nondisability determination.” (*Id.*) (quotation and citation omitted). The party appealing the ALJ’s
11 decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556
12 U.S. 396, 409-10 (2009).

13 A claimant must satisfy two conditions to be considered “disabled” and eligible for benefits
14 within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any
15 substantial gainful activity by reason of any medically determinable physical or mental impairment
16 which can be expected to result in death or which has lasted or can be expected to last for a
17 continuous period of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the
18 claimant’s impairment must be “of such severity that he is not only unable to do his previous
19 work[,] but cannot, considering his age, education, and work experience, engage in any other kind
20 of substantial gainful work which exists in the national economy.” 42 U.S.C. § 1382c(a)(3)(B).

21 The Commissioner has established a five-step sequential analysis to determine whether a
22 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
23 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant
24 is engaged in “substantial gainful activity,” the Commissioner must find that the claimant is not
25 disabled. 20 C.F.R. § 416.920(b).

26 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
27 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20 C.F.R.
28 § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of impairments

1 which significantly limits [his or her] physical or mental ability to do basic work activities,” the
2 analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not
3 satisfy this severity threshold, however, the Commissioner must find that the claimant is not
4 disabled. (*Id.*).

5 At step three, the Commissioner compares the claimant’s impairment to impairments
6 recognized by the Commissioner to be so severe as to preclude a person from engaging in
7 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more
8 severe than one of the enumerated impairments, the Commissioner must find the claimant disabled
9 and award benefits. 20 C.F.R. § 416.920(d).

10 If the severity of the claimant’s impairment does not meet or exceed the severity of the
11 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual
12 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s
13 ability to perform physical and mental work activities on a sustained basis despite his or her
14 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

15 At step four, the Commissioner considers whether, in view of the claimant’s RFC, the
16 claimant is capable of performing work that he or she has performed in the past (past relevant
17 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work,
18 the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the
19 claimant is incapable of performing such work, the analysis proceeds to step five.

20 At step five, the Commissioner considers whether, in view of the claimant’s RFC, the
21 claimant is capable of performing other work in the national economy. 20 C.F.R. §
22 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational
23 factors such as the claimant’s age, education, and past work experience. (*Id.*). If the claimant is
24 capable of adjusting to other work, the Commissioner must find that the claimant is not disabled.
25 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis
26 concludes with a finding that the claimant is disabled and is therefore entitled to benefits. (*Id.*).

27 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,
28 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the

1 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran*
3 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

4 **III. ISSUES AND ANALYSIS**

5 Plaintiff asserts the ALJ’s rejection of Plaintiff’s testimony—that the limitations from
6 which he suffers because of his severe impairments prevent him from performing work activity on
7 a sustained basis—is without support of substantial evidence. (Doc. 15 at 6). Thus, the issue before
8 the Court is whether the ALJ improperly rejected Plaintiff’s subjective symptom testimony. As set
9 forth below, the Court agrees with Plaintiff will remand for further proceedings.

10 **A. The Parties’ Contentions**

11 Plaintiff argues the ALJ’s rejection of his subjective symptom testimony regarding his
12 limitations from performing work activity on a sustained basis is improper. (Doc. 15 at 6). Plaintiff
13 argues that the ALJ failed to include legally sufficient rationale to dispute his symptom testimony,
14 offering only a “general discussion of the medical evidence” to show that Plaintiff’s symptoms are
15 “not consistent with the record” and the routine use of deficient, boilerplate language in improperly
16 rejecting Plaintiff’s claims. (Doc. 15 at 8-9). Specifically, Plaintiff asserts that the ALJ failed to
17 provide specific, clear, and convincing reasons for his credibility determinations. (*Id.* at 9) (“The
18 ALJ simply offers a conclusion that the medical evidence does not support the testimony[.]”).
19 Plaintiff contends the ALJ’s isolation of the record, and statement that “no physicians ever said
20 [Plaintiff] must stop working or was more limited than found by the ALJ[.]” are improper under
21 governing authority. (*Id.* at 10). Further, Plaintiff argues the ALJ’s reliance on objective evidence
22 to reject Plaintiff’s testimony is an insufficient basis to reject the testimony. (*Id.* at 11).

23 Defendant argues that the record shows Plaintiff was not as limited as he claimed. (Doc.
24 21 at 2). Defendant asserts that the ALJ’s finding that Plaintiff’s subjective symptom testimony is
25 not fully reliable is supported by the ALJ’s determination that Plaintiff’s testimony is inconsistent
26 with the objective medical evidence, his statements to treatment providers and the agency, his
27 treatment history, his activity, and the medical opinion evidence. (*Id.*). Defendant recounts the
28 ALJ’s discussion of Plaintiff’s subjective complaints and contrasts that testimony by detailing the

record evidence on which the ALJ relied to refute the reliability of Plaintiff's testimony. (*Id.* at 4-5). Defendant argues Plaintiff's described activities undermine the reliability of his claims. (*Id.* at 4). Additionally, Defendant argues the ALJ's consideration of the objective evidence shows a legitimate reason to discount Plaintiff's claims. (*Id.* at 5).

B. Governing Authority

The ALJ is responsible for determining credibility,⁵ resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). A claimant's statements of pain or other symptoms are not conclusive evidence of a physical or mental impairment or disability. 42 U.S.C. § 423(d)(5)(A); *see* SSR 16-3p, 2017 WL 5180304, at *2 ("an individual's statements of symptoms alone are not enough to establish the existence of a physical or mental impairment or disability"); *see also Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) ("An ALJ is not required to believe every allegation of disabling pain or other non-exertional impairment.") (internal quotation marks and citation omitted); *Molina v. Astrue*, 674 F.3d 1104, 1104 (9th Cir. 2012) (same), *superseded on other grounds by* 20 C.F.R. § 404.1502(a). Determining whether a claimant's testimony regarding subjective pain or symptoms is credible requires the ALJ to engage in a two-step analysis. *Molina*, 674 F.3d at 1112. The ALJ must first determine if "the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (internal punctuation and citations omitted). This does not require the claimant to show that his impairment could be expected to cause the severity of the symptoms that are alleged, but only that it reasonably could have caused some degree of symptoms. *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

If the first step is met and there is no evidence of malingering, "the ALJ must provide 'specific, clear and convincing reasons for' rejecting the claimant's testimony." *Treichler v.*

⁵ SSR 16-3p applies to disability applications heard by the agency on or after March 28, 2016. Ruling 16-3p eliminated the use of the term "credibility" to emphasize that subjective symptom evaluation is not "an examination of an individual's character but an endeavor to "determine how symptoms limit [the] ability to perform work-related activities." SSR 16-3p, 2017 WL 5180304, at *3.

1 *Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (*quoting Smolen*, 80 F.3d at 1281). *See*
 2 *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1160 (9th Cir. 2008) (noting an adverse
 3 credibility finding must be based on “clear and convincing reasons”). The ALJ must make findings
 4 that support this conclusion, and the findings must be sufficiently specific to allow a reviewing
 5 court to conclude the ALJ rejected the claimant’s testimony on permissible grounds and did not
 6 arbitrarily discredit the claimant’s testimony. *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004).

7 The Ninth Circuit does “not require ALJs to perform a line-by-line exegesis of the
 8 claimant’s testimony, nor do they require ALJs to draft dissertations when denying benefits.”
 9 *Stewart v. Kijakazi*, No. 1:22-cv-00189-ADA-HBK, 2023 WL 4162767, at *5 (E.D. Cal. Jun. 22,
 10 2023), F&R adopted, 2023 WL 5109769 (E.D. Cal. Aug. 8, 2023); *see Record v. Kijakazi*, No.
 11 1:22-cv-00495-BAM, 2023 WL 2752097, at *4 (E.D. Cal. Mar. 31, 2023) (“Even if the ALJ’s
 12 decision is not a model of clarity, where the ALJ’s ‘path may reasonably be discerned,’ the Court
 13 will still defer to the ALJ’s decision.”) (*quoting Wilson v. Berryhill*, 757 Fed. Appx. 595, 597 (9th
 14 Cir. 2019)). “The standard isn’t whether our court is convinced, but instead, whether the ALJ’s
 15 rationale is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 494
 16 (9th Cir. 2022) (the clear and convincing standard requires an ALJ to show his work).

17 The ALJ may consider numerous factors in weighing a claimant’s credibility, including “(1)
 18 ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying, prior
 19 inconsistent statements concerning the symptoms, and other testimony by the claimant that appears
 20 less than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a
 21 prescribed course of treatment; and (3) the claimant’s daily activities.” *Smolen*, 80 F.3d at 1284.
 22 In evaluating the credibility of symptom testimony, the ALJ must also consider the factors
 23 identified in SSR 16-3P. *Id.* (citing *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991)). Accord
 24 *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009). These factors include:

- 25 (1) Daily activities; (2) The location, duration, frequency, and intensity of pain or
 26 other symptoms; (3) Factors that precipitate and aggravate the symptoms; (4) The
 27 type, dosage, effectiveness, and side effects of any medication an individual takes
 28 or has taken to alleviate pain or other symptoms; (5) Treatment, other than
 medication, an individual receives or has received for relief of pain or other
 symptoms; (6) Any measures other than treatment an individual uses or has used to

1 relieve pain or other symptoms (*e.g.*, lying flat on his or her back, standing for 15
2 to 20 minutes every hour, or sleeping on a board); and (7) Any other factors
3 concerning an individual's functional limitations and restrictions due to pain or
4 other symptoms.

5 SSR 16-3P, 2017 WL 5180304, at *7. *See* 20 C.F.R. § 404.1529(c)(3). If the ALJ's finding is
6 supported by substantial evidence, the court may not engage in second-guessing. *Tommasetti*, 533
7 F.3d at 1039 (citations and internal quotation marks omitted).

8 The clear and convincing standard is “not an easy requirement to meet,” as it is “the most
9 demanding requirement in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th
10 Cir. 2014) (*quoting Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). “A
11 finding that a claimant’s testimony is not credible must be sufficiently specific to allow a reviewing
12 court to conclude the adjudicator rejected the claimant’s testimony on permissible grounds and did
13 not arbitrarily discredit a claimant’s testimony regarding pain.” *Brown-Hunter v. Colvin*, 806 F.3d
14 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

15 “The fact that a claimant’s testimony is not fully corroborated by the objective medical
16 findings, in and of itself, is not a clear and convincing reason for rejecting it.” *Vertigan v. Halter*,
17 260 F.3d 1044, 1049 (9th Cir. 2001). *See* 20 C.F.R. § 404.1529(c)(2) (“[W]e will not reject your
18 statements about the intensity and persistence of your pain or other symptoms or about the effect
19 your symptoms have on your ability solely because the objective medical evidence does not
20 substantiate your statements.”). Rather, where a claimant’s symptom testimony is not fully
21 substantiated by the objective medical record, the ALJ must provide additional reasons for
22 discounting the testimony. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). “The ALJ must
23 specify what testimony is not credible and identify the evidence that undermines the claimant’s
24 complaints – ‘[g]eneral findings are insufficient.’” *Id.* (*quoting Reddick v. Chater*, 157 F.3d 715,
25 722 (9th Cir. 1998)).

26 However, the medical evidence “is still a relevant factor in determining the severity of the
27 claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
28 The Court of Appeals has distinguished testimony that is “uncorroborated” by the medical evidence
29 from testimony that is “contradicted” by the medical records and concluded that contradictions with

the medical records, by themselves, are enough to meet the clear and convincing standard. *Hairston v. Saul*, 827 Fed. Appx. 772, 773 (9th Cir. 2020) (quoting *Carmickle*, 533 F.3d at 1161).

C. Analysis

Plaintiff testified that his severe medical impairments—obesity, depressive disorder, and PTSD, from which the ALJ found Plaintiff suffered (AR 26 ¶ 3)—prevent him from performing work activity on a sustained basis. (Doc. 15 at 6); (AR 50-73; 303-310). The ALJ summarized Plaintiff’s subjective symptom testimony:

[Plaintiff] alleges he stopped working on February 1, 2020[,] because of his mental and physical limitations. He has lingering back problems due to a previous car accident. [Plaintiff] maintains that he can only walk for 15 minutes before experiencing lower back and knee pain. The most he can lift is 10 pounds. In March 2020, he took Amtrak from San Diego to Bakersfield and almost got lost because he almost got off in the wrong city. After moving to Bakersfield, he has not been driven outside that city because there is no one to drive him. He has a driver’s license but sometimes his friend drives him to the grocery store. [] [W]hen using the public bus system, he frequently misses his stop due to being distracted. Being at a store is stressful because it is always crowded. At the store, he has problems carrying heavy items because back problems. [Plaintiff] testified that he has a computer, which he uses to frequently watch short YouTube videos. He gets bored and loses interest after 20 minutes. He also uses his cell phone to watch videos. He does not really text anyone except for a few people because he does not like texting. [Plaintiff] testified that he had a girlfriend. He has not attended any community events but has attended church services, which last about one hour. He leaves after the service and does not stay to socialize. [] [Plaintiff] alleged he stays to himself because he has difficulties being around people. He has been fired from 2 jobs because of incidents involving other employees, 1 involved his ex-wife against whom he obtained a restraining order. He is suspicious of others and believes they are trying to hurt or trick him.

(AR 29). The ALJ found that Plaintiff’s medically determinable impairments could reasonably be expected to cause Plaintiff’s alleged symptoms. (AR 29). However, the ALJ rejected Plaintiff’s claims regarding the intensity, persistence, and limiting effects of his symptoms, finding that they “are not entirely consistent with the medical evidence and other evidence in the record[.]” (*Id.*); see *Treichler*, 775 F.3d at 1103 (noting that ALJs “routinely include this [boilerplate] statement in their written findings as an introduction ... before [identifying] what parts of the claimant’s testimony were not credible and why.”).

Here, in discounting Plaintiff’s testimony, the ALJ relied on the following: (1) Plaintiff’s

1 purportedly inconsistent statements were at odds with his claims to debilitating impairments; (2)
 2 Plaintiff's daily activities purportedly were inconsistent with his allegations of disabling functional
 3 limitations; and (3) Plaintiff's claims were not corroborated by objective medical evidence. (AR
 4 29-34).

5 *1. Plaintiff's Purported Inconsistent Statements are Not a Clear and*
 6 *Convincing Reason to Reject His Symptomology Testimony*

7 (a) Positive results from medications

8 As to Plaintiff's "alleged significant mental health symptoms," the ALJ recited record
 9 findings, including records of Plaintiff's medication management and reporting to treatment
 10 providers, to show his "condition is not as debilitating as alleged and improved with treatment."
 11 (AR 30).

12 That Plaintiff obtained some relief from mental health symptoms through use of prescription
 13 medications is not a proper ground upon which the ALJ may discount Plaintiff's credibility or reject
 14 his symptomology testimony. The Social Security Administration regulations state that in
 15 evaluating the intensity and persistence of symptoms and determining the extent they limit a
 16 claimant's capacity to work, a relevant factor to consider is "[t]he type, dosage, effectiveness, and
 17 side effects of any medication you take or have taken to alleviate your pain or other symptoms."
 18 20 C.F.R. § 404.1529(c)(3)(iv). Thus, the use of prescription medications to control but not
 19 eliminate mental distress symptoms should be considered by the ALJ as a limiting factor in the
 20 residual functional capacity. Defendant cites no authority that the use of prescription psychotropic
 21 medications to regulate but not eradicate a mental health disorder or its symptoms should be used
 22 to discount a claimant's symptoms. *Cf. Donald R. F. v. Saul*, No. 5:18-00158 ADS, 2019 WL
 23 7938245, at *5 (C.D. Cal. Sept. 12, 2019) (rejecting similar "reported improvement with
 24 medication" argument as basis for discounting symptomology testimony).⁶

25 _____
 26 ⁶ For the same reasons, it was error for the ALJ to discount Plaintiff's symptomology
 27 testimony on the grounds that Plaintiff reported he could improve his mental health symptoms by
 28 working out. (AR 30). While the Commissioner argues Plaintiff's reported ability to workout
 contradicts his testimony that he could lift no more than ten pounds (Doc. 21 at 5), the record
 does not sufficiently evidence an inconsistency warranting an adverse credibility finding. In any
 event, this argument is an improper post hoc rationalization because the ALJ did not rely on this

(b) Ability to walk

The ALJ also discounted Plaintiff's credibility on the grounds that, though he testified "he could only walk for 15 minutes," records in fact revealed that Plaintiff "reported walking over 2 miles to pick up prescriptions and that he was walking everywhere because he did not have a car," demonstrating an apparent inconsistency. (AR 31).

Plaintiff did in fact testify that he could only walk for 15 minutes *before needing to take a break*. (AR 66-67). At that point, Plaintiff testified he experiences pain in his lower back and legs. *Id.* And Plaintiff did in fact previously report to a social worker that on one occasion, he claimed to have walked two miles to a medical clinic to acquire medications. (AR 484-84). These two statements – needing to rest after 15 minutes of walking due to pain but walking regularly, including on one occasion a total distance of two miles – are not (without further explanation by the ALJ) internally inconsistent.

Because the ALJ rejected Plaintiff's symptomology testimony based on his unfounded assessment that it was inconsistent with other statements, his reasoning is not supported by substantial evidence. *See Ghanim v. Colvin*, 763 F.3d 1154, 1164-65 (9th Cir. 2014) (ALJ's adverse credibility assessment was error because his conclusion that claimant testimony conflicted with previous statements was not supported by the record).

(c) Issues with social functioning

Similarly, the ALJ discounted Plaintiff's credibility by contrasting his reported "issues with social functioning" with other evidence in the record. (AR 31) ("the records reveal he reported having a new girlfriend in September 2020 and that he spent time with others and [went] to church regularly."). Here, too, the ALJ fails to support his conclusions with substantial evidence.

First, although Plaintiff did claim to have a girlfriend at one point, he also stated she was his only friend, that he did not understand why she put up with him, and that he expected her to leave him. (AR 68). That does not contradict Plaintiff's testimony about experiencing social issues.

asserted inconsistency in discounting Plaintiff's testimony concerning his capacity to lift/bear weight. *See Bray*, 554 F.3d at 1225-26 (courts must "review the ALJ's decision based on the reasoning and factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.").

1 Second, although he did claim to go to church regularly, as the ALJ noted, Plaintiff testified that he
 2 “leaves after the service and does not stay to socialize.” (AR 29). That also does not contradict
 3 Plaintiff’s testimony about experiencing social issues. Finally, to support his characterization that
 4 Plaintiff “spent time with others,” the ALJ cites a function report in which Plaintiff responded to
 5 the question about his church attendance with the answer, “Each week, pretty active.” (AR 331)
 6 (citing AR 307). While Plaintiff’s mere attendance at church does constitute spending time with
 7 others, given his unrefuted testimony that he did not socialize with others, it hardly is a basis for
 8 discounting Plaintiff’s testimony that he experiences social issues.

9 Because the ALJ rejected Plaintiff’s symptomology testimony based on his unfounded
 10 assessment that it was inconsistent with other statements, his reasoning is not supported by
 11 substantial evidence. *See Ghanim*, 763 F.3d at 1164-65.

12 2. *Plaintiff’s Activities of Daily Living (ADL) do Not Provide a Clear and*
 13 *Convincing Reason to Reject His Symptomology Testimony*

14 An ALJ may reject a claimant’s subjective symptom testimony if it is inconsistent with the
 15 claimant’s activities of daily living. *Tommasetti*, 533 F.3d at 1039. There are two grounds on
 16 which an ALJ may use a claimant’s daily activities to question a claimant’s credibility as to her
 17 subjective symptoms: (1) when daily activities demonstrate the claimant has transferable work
 18 skills, and (2) when daily activities contradict the claimant’s testimony as to the degree of functional
 19 limitation. *Orn*, 495 F.3d at 639. However, “disability claimants should not be penalized for
 20 attempting to lead normal lives in the face of their limitations.” *Reddick*, 157 F.3d at 722; *see*
 21 *Smolen*, 80 F.3d at 1284 n.7 (“The Social Security Act does not require that claimants be utterly
 22 incapacitated to be eligible for benefits, and many home activities may not be easily transferable to
 23 a work environment where it might be impossible to rest periodically or take medication.”). “The
 24 mere fact that a plaintiff has carried on with certain daily activities, such as grocery shopping,
 25 driving a car, or limited walking for exercise, does not in any way detract from [their] credibility[.]”
 26 *Webb v. Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005) (quoting *Vertigan*, 260 F.3d at 1050).
 27 Regarding mental health issues, “[c]ycles of improvement and debilitating symptoms are a common
 28 occurrence,” and an ALJ errs by “pick[ing] out a few isolated instances of improvement over a

1 period of months or years and [] treat[ing] them as a basis for concluding a claimant is capable of
2 working.” *Garrison*, 759 F.3d at 1017.

3 Plaintiff argues that nothing in Plaintiff’s testimony regarding his limitations nor anywhere
4 else in the record or the decision indicates that he is capable of maintaining substantial gainful work
5 activity. (Doc. 15 at 14). In rejecting Plaintiff’s testimony, the ALJ simply recited a list of activities
6 of daily living from the record which he believed indicates Plaintiff has a higher mental and
7 physical functioning than alleged. (AR 31). The ALJ noted that Plaintiff’s activities of daily living
8 were reportedly done independently. (*Id.*). The ALJ noted that in April 2021, Plaintiff reported
9 living alone in an apartment, and that he was able to do chores, take a shower, have breakfast, and
10 go on a walk about twice a week. (*Id.*). The ALJ noted that Plaintiff watched television, did
11 computer and telephone work, and texted and read a few hours a day. (*Id.*). The ALJ also pointed
12 out that Plaintiff reported being a minister to treatment providers but minimized his experience as
13 a pastoral assistant. (*Id.*).

14 The ALJ failed to adequately explain how Plaintiff’s described activities of daily living
15 conflict with his claimed limitations or demonstrate an ability to function in the workplace.
16 Plaintiff’s intermittent engagement in these activities does not undermine his claim that he is unable
17 to sustain work. *See Orn*, 495 F.3d at 639 (“The [Act] does not require that claimants be utterly
18 incapacitated to be eligible for benefits.”). Nor does the ALJ demonstrate how Plaintiff’s activities
19 of daily living demonstrate his ability to rejoin the workforce. Passive activities like watching
20 television are not transferable skills, and the amount of time Plaintiff spent preparing breakfast,
21 doing laundry, and texting was not substantial. *See, e.g., Wilson v. Comm’r of Soc. Sec. Admin.*,
22 303 Fed. Appx. 565, 566 (9th Cir. 2008) (finding a plaintiff’s occasional driving does not render
23 him able to work); *Vertigan*, 260 F.3d at 1050 (9th Cir. 2001) (finding “only a scintilla of evidence
24 in the record to support the ALJ’s finding that [plaintiff] lacked credibility about her pain and
25 physical limitations” where the ALJ relied on Plaintiff’s ability to go “grocery shopping with
26 assistance, walk approximately an hour in the malls, get together with her friends, play cards, swim,
27 watch television, ... read.... [and participate in] physical therapy for six months and exercise[] at
28 home.”); *Costa v. Berryhill*, 700 Fed. Appx. 651, 653 (9th Cir. 2017) (“The ability to accomplish

daily tasks irregularly does not necessarily equate with an ability to work.”); *Trevizo*, 871 F.3d at 682 (“[T]here is almost no information in the record about [plaintiff]’s childcare activities; the mere fact that she cares for small children does not constitute an adequately specific conflict with her reported limitations.”). Thus, the Court cannot ascertain which of Plaintiff’s symptom testimony the ALJ rejected based on the ADL evidence, or why. *See, e.g., Isis A. v. Saul*, No. 18cv01728-W-MSB, 2019 WL 3554969, at *6 (S.D. Cal. Aug. 5, 2019) (“Because the ALJ did not identify any actual inconsistency in his opinion or describe his reasoning, the Court cannot ascertain which of Plaintiff’s symptom and pain testimony the ALJ rejected based on the ADL evidence.”) (citing *inter alia Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001)). For these reasons, the ALJ did not identify a specific, clear, and convincing reason for discrediting Plaintiff’s symptom testimony when he did not explain how those ADLs either contradicted Plaintiff’s testimony or equaled transferable work skills.

3. *Lack of Support from Objective Medical Evidence is Not Clear and Convincing Reason to Reject Plaintiff’s Symptomology Testimony*

Finally, Plaintiff argues that Defendant’s reliance on the objective evidence to reject Plaintiff’s symptom testimony, in-and-of-itself, is insufficient to reject the testimony. (Doc. 15 at 11). The Court agrees.

While finding that a claimant’s complaints are inconsistent with (as compared to unsupported by) objective medical evidence can satisfy the clear and convincing requirement for rejecting symptomology testimony (*see Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1297 (9th Cir. 1998); *Isis A.*, 2019 WL 3554969, at *7), an ALJ cannot reject such testimony “solely because the degree of pain alleged is not supported by objective medical evidence.” *Orteza v. Shalala*, 50 F.3d 748, 749–50 (9th Cir. 1995); *Bunnell*, 947 F.2d at 345.

Since the other reasons the ALJ gave for discounting Plaintiff’s credibility were not supported by substantial evidence, even if the ALJ properly found that the objective medical evidence is inconsistent with Plaintiff’s symptomology testimony, this alone is not a proper basis to support the ALJ’s overall credibility determination. Thus, the ALJ’s reason for discrediting Plaintiff’s testimony here is legally insufficient to support his adverse determination, and thus

cannot be legally sufficient by itself to reject Plaintiff's testimony. *See, e.g., Zinobia v. Berryhill*, No ___, 2019 WL 13032522, at *6 (C.D. Cal. Jan. 29, 2019) ("Standing alone, a reason based on lack of objective medical evidence is insufficient to support the assignment of little weight to a claimant's subjective symptom allegations.") (citing *inter alia Burch*, 400 F.3d at 681); *Stone v. Berryhill*, No. 17-cv-1689-W-RNB, 2018 WL 2317549, at *1, *5 (S.D. Cal. May 17, 2018), R&R adopted, 2018 WL 3327873 (S.D. Cal. July 6, 2018) (same).

* * * * *

In sum, the ALJ failed to consider or properly reject Plaintiff's symptom testimony regarding his limitations from performing sustained work activity under the applicable standard. While an ALJ's error may be harmless where he provides valid reasons for disbelieving a claimant's testimony in addition to invalid reasons (*Molina*, 674 F.3d at 1115 (citing cases)), here, the ALJ provided no valid reasons for rejecting Plaintiff's symptomology testimony. Accordingly, the error is not harmless.

B. Request for Remand

Plaintiff seeks to remand for payment of benefits or in the alternative, for correction of the legal errors. (Doc. 15 at 18-19). Defendant argues that where the Court finds reversible error, the ordinary remand rule applies. (Doc. 21 at 7). "The decision whether to remand for further proceedings or simply to award benefits is within the discretion of court." *Trevizo*, 871 F.3d at 682 (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). "Remand for further administrative proceedings is appropriate if enhancement of the record would be useful." *Benecke v. Barnhart*, 379 F.3d 587, 593 (emphasis omitted) (9th Cir. 2004). On the other hand, if the record has been fully developed such that further administrative proceedings would serve no purpose, "the district court should remand for an immediate award of benefits." (*Id.*). However, a remand for an immediate award of benefits is appropriate only in rare circumstances. *Brown-Hunter*, 806 F.3d at 495.

In this case, the ALJ erred by (1) failing to identify the precise statements made by Plaintiff that were not credible and (2) failing to provide adequate justification for finding Plaintiff's statements not fully credible. Given these errors, the Court concludes that remand for further

proceedings is warranted because additional administrative proceedings may remedy the deficiencies in the ALJ's decision noted herein.

IV. CONCLUSION AND ORDER

For the reasons set for above, the Court finds the ALJ erred in evaluating opinions in the record and failed to apply the proper legal standards. Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment (Doc. 14) is **GRANTED**;
2. The decision of the ALJ (Doc. 14) is **REVERSED**;
3. This matter is **REMANDED** pursuant to sentence four of 42 U.S.C. §405(g) for further proceedings consistent with this decision; and
4. The Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff Abe Parker, III and against Defendant Commissioner of Social Security.

IT IS SO ORDERED.

Dated: January 23, 2025


UNITED STATES MAGISTRATE JUDGE